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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12  
13 UNITED STATES OF AMERICA, ) CASE NO. 3:23:CR-00107 SI  
14 Plaintiff, )  
15 v. ) UNITED STATES' MOTION FOR DETENTION  
16 FABRICIO RAMIREZ, ) Date: April 25, 2023  
17 Defendant. ) Time: 10:30 a.m.  
18 ) Court: Honorable Lisa J. Cisneros  
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1                   **I.           INTRODUCTION**

2       On March 22, 2023, at around 7 p.m., Fabricio Ramirez (“Defendant”) was arrested by San  
 3 Francisco Police Department (SFPD) when he was observed engaging in a drug sale in UN Plaza.  
 4 Defendant fled from police, and when apprehension became inevitable, he threw the backpack he was  
 5 wearing over a tall stone wall. Inside the backpack, defendant had a staggering quantity and variety of  
 6 deadly drugs including: 450 grams of fentanyl, methamphetamine, cocaine, suspected alprazolam and  
 7 suspected oxycodone pills. On the date he was arrested, the defendant had two open fentanyl drug sales  
 8 cases in San Francisco from September of 2022 and as a condition of his pre-trial release on one of those  
 9 cases had a stay-away order from the Tenderloin.

10      The defendant is a danger to the community. This case is his third arrest for selling fentanyl in  
 11 San Francisco since September of 2022. He is also a substantial flight risk. He is not a United States  
 12 citizen. On the date he was arrested he was in UN Plaza, in direct violation of the state court’s stay-away  
 13 order and he fled from police. To safeguard his appearance at trial, and to ensure the safety of the  
 14 community, the government respectfully requests that he be detained pending trial.

15                   **II.          FACTUAL BACKGROUND**

16                   **A.          Charged Conduct**

17      On March 22, 2023, SFPD observed the defendant engage in a hand-to-hand drug transaction  
 18 near UN Plaza. As SFPD officers moved in to arrest the defendant, he fled from police, first on his bike,  
 19 and then eventually on foot. As police closed in on the defendant, they saw him throw the black  
 20 backpack he was wearing over a brick wall, in to the courtyard of a church on Golden Gate Avenue.  
 21 SFPD retrieved the back. Inside, the defendant had a digital scale, a variety of clear plastic baggies and  
 22 the following drugs: 450 grams of fentanyl, 16 grams of methamphetamine, 18 grams of cocaine, 64.5  
 23 grams of suspected alprazolam and 9.7 grams of suspected oxycodone pills.

24      On April 12, 2023, a federal grand jury in the Northern District of California returned an  
 25 indictment charging the defendant with one count of 21 U.S.C. § 841(a)(1) and 21 U.S.C. §  
 26 841(b)(1)(B)(vi), possession with intent to distribute 40 grams and more of fentanyl.

27                   **B.          Defendant’s Criminal History**

28      The instant case is the defendant’s third arrest for fentanyl sales in San Francisco.

On September 2, 2022, SFPD saw the defendant engage in a number of hand-to-hand drug sales in UN Plaza near the Civic Center BART escalator entrance. On that date, he possessed the following drugs: over 303 grams of fentanyl, 29 grams of methamphetamine, 13 grams or heroin, and 6 grams of cocaine. The defendant was arrested and charged. He was released pre-trial, with a specific court order to stay-away from UN Plaza. That case is currently pending trial in San Francisco Superior Court.

6       Five days later he was again arrested for selling fentanyl in San Francisco. On September 7,  
7 2022, the defendant sold fentanyl to an undercover officer near 7<sup>th</sup> and Natomas, in the SoMa  
8 neighborhood of San Francisco. He was again arrested and charged. He was released pending trial. That  
9 case is currently pending trial in San Francisco Superior Court.

### **III. LEGAL STANDARD**

Under the Bail Reform Act of 1984, the Court must detain a defendant before trial without bail where “the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person in the community.” 18 U.S.C. § 3142(e)(1). Detention is appropriate where a defendant is either a danger to the community or a flight risk; the government need not prove that both factors are present. *United States v. Motamed*, 767 F.2d 1403, 1406 (9th Cir. 1985). A finding that a defendant is a danger to the community must be supported by clear and convincing evidence, but a finding that a defendant is a flight risk need only be supported by a preponderance of the evidence. *Id.*

19        “[T]he Bail Reform Act mandates an individualized evaluation guided by the factors articulated  
20 in [18 U.S.C.] § 3142(g).” *United States v. Diaz-Hernandez*, 943 F.3d 1196, 1199 (9th Cir. 2019). Those  
21 factors are: (i) the nature and circumstances of the offense charged; (ii) the weight of the evidence  
22 against the defendant; (iii) the history and characteristics of the defendant, including the defendant’s  
23 character, physical and mental condition, family and community ties, past conduct, history relating to  
24 drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings, as well  
25 as whether the crime was committed while the defendant was on probation or parole; and (iv) the nature  
26 and seriousness of the danger to any person or to the community that would be posed by the defendant’s  
27 release. See 18 U.S.C. § 3142(g); *United States v. Winsor*, 785 F.2d 755, 757 (9th Cir. 1986).

28 Where there is probable cause that a defendant has violated an offense for which a maximum of

1 ten years in prison or more is prescribed in the Controlled Substances Act, courts apply a rebuttable  
 2 presumption that no condition or combination of conditions will reasonably assure the defendant's  
 3 appearance as required and the safety of the community. *See 18 U.S.C. § 3142(e)(3)(A)*. Under this  
 4 scheme, the burden of production shifts to the defendant. *United States v. Hir*, 517 F. 3d 1081, 1086 (9th  
 5 Cir. 2008). Even if the defendant rebuts the presumption, the presumption is not erased; instead, it  
 6 remains in the case as an evidentiary finding militating against release that is to be weighted along with  
 7 other relevant factors. *See id.*

#### 8                  IV.        ARGUMENT

##### 9                  A.        **The defendant faces a rebuttable presumption in favor of detention.**

10 On March 22, 2023, the defendant was arrested in physical possession of fentanyl. A grand jury  
 11 returned an indictment charging him with possession to distribute fentanyl. Therefore, there is probable  
 12 cause to believe the defendant committed an offense for which a maximum term of imprisonment of ten  
 13 years or more is prescribed in the Controlled Substances Act. As a result, there is a rebuttable  
 14 presumption that no condition or combination of conditions will reasonably assure the appearance of the  
 15 person as required and the safety of the community. *See 18 U.S.C. § 3142(e)(3)(A)*.

##### 16                  B.        **The defendant cannot overcome the presumption that he is a flight risk.**

17 The defendant is a substantial flight risk. He is not a citizen of the United States. When  
 18 approached by police on March 22, 2023, he fled, leading multiple officers on a foot chase. He also  
 19 attempted to hide evidence, when he threw his backpack full of drugs over the stone wall. He was seen  
 20 selling drugs near UN Plaza, despite the state court issuing an order for him to stay away from UN  
 21 Plaza. He faces a severe penalty if convicted and possible deportation. Additionally, the evidence  
 22 against the defendant is very strong. *See United States v. Gebro*, 948 F.2d 1118, 1122 (9th Cr. 1991)  
 23 (strong evidence of guilt "makes it more likely that he will flee"). For all these reasons, he poses a  
 24 substantial flight risk.

##### 25                  C.        **The defendant cannot overcome the presumption that he is a danger to the 26 community.**

27 The defendant has been arrested for selling fentanyl in San Francisco on three separate occasions  
 28 in the last 6 months. He had large quantities of fentanyl and other drugs on his person when he was

1 arrested on September 2, 2022. Five days later, on September 7, 2022, despite having an open criminal  
2 case for selling fentanyl, he was selling drug again, this time to an undercover officer. That arrest also  
3 did not deter him. On March 22, 2023, he was arrested a third time for selling deadly fentanyl in San  
4 Francisco. Two milligrams of fentanyl is considered a lethal dose.<sup>1</sup> On March 22, 2023, the defendant  
5 had nearly a pound. Even with two state criminal cases looming and a stay away order from UN Plaza,  
6 the defendant persisted in selling deadly drugs. Based on his recent, prior conduct the defendant will  
7 continue to sell lethal drugs if he is released from custody.

## V. CONCLUSION

9        The defendant cannot overcome the presumption that there are no set of conditions that will  
10 reasonably assure the safety of the community or ensure his appearance at court proceedings. The Court  
11 should order the defendant detained pending trial.

13 | DATED: April 24, 2023

Respectfully submitted,

ISMAIL J. RAMSEY  
United States Attorney

/s/ *Emily R. Dahlke*  
EMILY R. DAHLKE  
Assistant United States Attorney

<sup>1</sup> <https://www.dea.gov/resources/facts-about-fentanyl>